

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: United Dominion Realty)
 Personal Property Account No. 104830) Davidson County
 Tax year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has made the following back assessments/reassessment of the subject property:

Original Assessment	Revised Assessment	Back Assessment/ Reassessment
\$32,355	\$107,849	\$75,648

On July 14, 2006, the taxpayer filed a direct appeal with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on October 11, 2006 in Nashville. United Dominion Realty, d/b/a (doing business as) The Preserve at Brentwood ("United"), the appellant, was represented by its employee, Michael Rogers. Alan Morgan of the Davidson County Assessor's Office was present. Also in attendance at the hearing were Margie Hughes and Michelle Reeves of Tax Management Associates, auditors, for the County.

Findings of Fact and Conclusions of Law

Background. United is a management company based in Arizona that purchases commercial properties throughout the country. They acquired the subject property¹ in June of 2004. Mr. Rogers testified that when the property was purchased by his company they also acquired all contents of each unit. According to Mr. Rogers all the appliances were originally purchased in 1997.

The record shows that United complied with Tennessee Code Annotated (T.C.A.) §67-5-903 by filing a Tax Schedule "B" by March 1, 2005. The Assessor then sent United a Notice of Appraised Value, Classification, and Assessed Value on May 20, 2005. Then in March of 2006 the Assessor ordered an audit and contracted with Tax Management Associates (TMA) to conduct the audit. Ms. Hughes of TMA stated that she set up an appointment for the audit and

¹This is a 24-unit apartment complex located in Davidson County.

requested certain documentation from United prior to conducting the actual review.² Mr. Rogers did not provide the requested information but the Office Manager for The Preserve at Brentwood did produce a property inventory.³ The Office Manager also produced a list of other assets that were not included in the original Tax Schedule "B". Ms. Hughes stated that she was informed by the Office Manager that United considered these items nontaxable. This list however did include cost information and United had told the auditors that the property was acquired in 2004.

T.C.A. §67-1-1005 allows the assessing official (in this case the Davidson County Property Assessor) to issue a certification of reassessment upon assets that they believe have previously escaped assessment.

Contentions of the Parties. United contends that the date that the property was "originally" acquired, 1997, instead of the date that they acquired it, 2004, should be the starting date. The Assessor contends that since "tangible personal property assets were not reported and tangible personal property assets that were reported were undervalued" an additional assessment was appropriate.

Applicable Law. Article II, section 28 of the Tennessee Constitution provides that "all property real, personal or mixed shall be subject to taxation" unless exempted by the legislature. All business or professional entities must submit annually to the assessor on the prescribed form a complete list of the tangible personal property used (or held for use) in their business or profession T. C.A. §67-5-903.

As the party seeking to change the current assessment of the subject property, the taxpayer has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Analysis It is the statutory responsibility of the taxpayer to file the yearly schedule with an **accurate** listing of **all the assets and their purported value** (emphasis supplied, citation omitted). United contends that the value of the property is \$18,489.⁴ The County of course contends that based upon the TMA audit and the information available to them their figures are correct.

²The record indicates that TMA requested in advance of the meeting a depreciation schedule, financial statements or a trial balance for the tax year in question.

³The list is included in the County's collective exhibit number 2 but did not include acquisition dates or cost for any of the listed assets.

⁴Taxpayer's exhibit number 1 shows a total of \$18,489 with an assessment rate of 30% to \$5,547.

The statute [T.C.A. §67-5-903 (b)] makes it clear whose responsibility it is to fill out and file the required documents. United neglected to include all of its tangible personal property assets and additionally chose to fill out the schedule with the acquisition date and figures without documentation. Further, Mr. Rogers has never explained how some of the assets went completely unreported, which would also trigger a back assessment. Mr. Rogers did not supply the necessary documentation requested by the auditors so that his figures could have been supported.

In the opinion of the administrative judge, United failed in their duty to list accurately their tangible taxable assets and as a result, the County's responsibility to back assess or re-assess those assets was activated. United has done nothing to show that the methodology of the County's auditor⁵ was incorrect other than stating that the assessment is wrong. Therefore United has failed to meet their burden of showing that they are entitled to the requested relief.

Order

It is, therefore, ORDERED that the back assessment/reassessment of the subject property be affirmed.

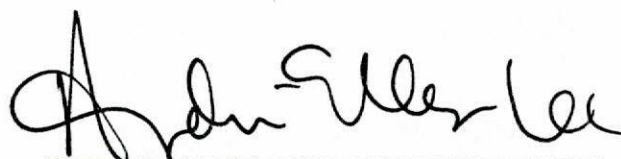
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

⁵There is no indication that United ever attempted to show the County the correct information. It should be noted as previously stated that this was United responsibility not the County's.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of December, 2006.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Mark Rogers, United Dominion Realty, LP c/o EProperty Tax
JoAnn North, Davidson County Assessor of Property

UNITED DOMINION.DOC